

CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
801 North First Street, Room 400  
San José, California 95110-1795

## STAFF REPORT

Hearing Date/Agenda Number  
P.C. 01/28/2004      Item:

File Number  
CP03-064

Application Type  
Conditional Use Permit

Council District  
8

Planning Area  
Evergreen

Assessor's Parcel Number(s)  
660-21-013

### PROJECT DESCRIPTION

Completed by: John W. Baty

Location: North side of Yerba Buena Rd, approximately 1,800 feet easterly of San Felipe Rd (2995 Yerba Buena Rd)

Gross Acreage: 1.75

Net Acreage: 1.75

Net Density: N/A

Existing Zoning: R-1-5 Residence

Existing Use: Church w/ existing monopole on site

Proposed Zoning: No change

Proposed Use: Church and extension of height for an existing monopole for additional wireless communications antennas

### GENERAL PLAN

Completed by: JWB

Land Use/Transportation Diagram Designation  
Public / Quasi-Public

Project Conformance:  
☒ Yes    ☐ No  
☐ See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: JWB

North: Evergreen Valley College

R-1-5 Residential Zoning District

East: Evergreen Valley College

R-1-5 Residential Zoning District

South: Open Space / Yerba Buena Creek

R-1-5(CL) Residential Zoning District

West: Evergreen Valley College

A-Agricultural Zoning District

Completed by: JWB

☐ Environmental Impact Report found complete  
☐ Negative Declaration circulated on  
☒ Negative Declaration adopted on May 8, 2000

☐ Exempt  
☐ Environmental Review Incomplete

### FILE HISTORY

Completed by: JWB

PUBLIC AGENCY COMMENTS RECEIVED	Completed by: JWB
Department of Public Works	
See attached memorandum	
Other Departments and Agencies	
Fire Department memorandum	
GENERAL CORRESPONDENCE	
None received	
ANALYSIS AND RECOMMENDATIONS	

## BACKGROUND

The applicant, MetroPCS, Inc., is requesting a Conditional Use Permit to allow a 10-foot height extension of an existing wireless communications monopole from 40 feet to 50 feet, the installation of three (3) new antenna panels and an associated 160 square-foot equipment shelter at an existing church site. The monopole will continue to be designed to look like a pine tree, similar in form to the natural trees that surround this area of the property. The new antennas will be flush-mounted in a “slimline” manner to the extended-height pole.

The monopole and associated equipment are located in the northeast corner of the church property in the parking lot behind the existing church building. This corner of the property is surrounded by Evergreen Valley College.

The Zoning Ordinance requires a Conditional Use Permit for installation of wireless communication antennas in the R-1-5 Residence Zoning District.

On May 10, 2000 the Planning Commission approved a Conditional Use Permit (File No. CP99-067) for the existing 40-foot tall monopole with six (6) wireless communications antennas and an associated equipment enclosure. A Development Variance (File No. V99-026) was also approved with the Conditional Use Permit to allow the monopole to exceed the 35-foot maximum height of the zoning district. This monopole was designed as a simulated pine tree.

Since the approval of the existing monopole and antennas a number of changes have been made to the City's Zoning Ordinance pertinent to the installation of wireless communications. Pursuant to the Zoning

hearing aids, pace makers, and other electronic devices. Staff determined the reported interference resulted from cordless telephones and not from antennas.

## **ENVIRONMENTAL REVIEW**

Environmental Clearance for this project is addressed by the re-use of the previously adopted Negative Declaration for the existing monopole, antennas and associated equipment, which was granted by the Director of Planning, Building and Code Enforcement on May 8, 2000. This project, which is a minor expansion of the existing use, is not expected to cause any significant or additional environmental impacts.

## **GENERAL PLAN CONFORMANCE**

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Public/Quasi Public. Freestanding communication structures are allowed in this designation provided that the project is: (1) adjacent to an arterial street, (2) located to significantly minimize its visibility, and (3) is consistent with applicable General Plan Urban Design height limit policies for structures other than buildings.

The proposed monopole is located on a site adjacent to Yerba Buena and San Felipe Roads, both arterial streets. The proposed monopole, as located on the property, is partially screened from the street by the existing church building and is designed to look like a pine tree placed among a cluster of other real trees of similar size. The 50-foot proposed height falls well below the 100-foot maximum established in the General Plan Urban Design Policy.

The proposed monopole, as located and designed, conforms to the General Plan.

## **ANALYSIS**

The issues discussed are conformance to the: 1) Zoning Ordinance, and 2) Council Policy 6-20, Land Use Policy for Wireless Communication Facilities.

### Conformance to the Zoning Ordinance

The Zoning Ordinance identifies two key requirements for monopoles: 1) the proposed height may not exceed 60 feet, and 2) the design of the antenna must use a “slim” pole design. The proposed monopole would extend the height from 40 feet to 50 feet, a height that falls below the maximum allowed under the Zoning Code. The pole extension and new antennas will meet the “slim” pole design criteria required by the Zoning Code.

All associated equipment will be located within a solid wall enclosure adjacent to the monopole. Areas of dead or deficient landscaping within church property will be replanted. The existing illegal free-standing signage along Yerba Buena Road will be replaced with a single monument sign in substantial conformance with the sign approved under the previous Conditional Use Permit (File No. CP94-010) for the church use.

### *Height*

Antenna installations should conform to the General Plan and Zoning Ordinance height restrictions. The proposed 10-foot height extension of the existing monopole would result in a total monopole height of 50-feet. The General Plan Urban Design height limit for structures other than buildings (such as monopoles) is 100-feet. As previously indicated, the Zoning Ordinance allows for slim pole antennas up to a maximum height of 60-feet.

### *Setbacks from Residential Uses*

The Council Policy requires that freestanding monopoles should be located no closer to a parcel developed for use as a single-family or multi-family residence than 35-feet or a distance equal to 1 foot for every 1 foot of structure height, whichever is greater. There are no single-family or multi-family residential uses within 35-feet of the monopole. Although the monopole is adjacent to the residentially zoned Evergreen Valley College, it is not anticipated that the college will be redeveloped with residential uses.

### *Performance Standards*

This project does not include the installation of power-generating equipment. Should the applicant wish to include such equipment in the future a Special Use Permit for a “utility structure” would be required and the equipment would be required to meet the performance standards, including noise, air quality, and vibration, for the R-1 Residence Zoning District.

### *Parking*

The project will not have any impact on existing parking for the church use.

## **RECOMMENDATION**

Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

4. The proposed project is subject to City Council Policy 6-20, Land Use Policy for Wireless Communication Facilities.
5. The subject site contains an existing church and parking lot, surrounded by Evergreen Valley College to the north, east and west, with Yerba Buena Road to the south.
6. The monopole and associated equipment are proposed to be located in the northeast corner of the subject site adjacent to Evergreen Valley College.
7. The proposed project will not eliminate required parking.
8. The proposed height extension of the existing monopole will continue to be designed to simulate an evergreen tree.
9. The monopole is located in close proximity to several existing evergreen trees.
10. The subject Zoning District, R-1-5 Residence, has a height limit of 35-feet.
11. Section 20.80.1900A of the Zoning Ordinance allows the maximum height of wireless communications antenna to be increased over the required maximum height of the zoning district in which it is located up to a maximum of 60-feet.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram designation and relevant urban design policies.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project substantially complies with the applicable criteria of City Council Policy 6-20, Land Use Policy for Wireless Communication Facilities.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning

2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

### CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

### CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

2. **Conformance with Plans.** Construction and development shall conform to the approved development plans entitled, "Fil-Am Seventh Day Adventist" dated October 16, 2003, and last revised on December 16, 2003, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 24).
3. **Permit Superseded.** This Permit supercedes approval under file CP99-067.
4. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. The applicant must abate any such nuisance immediately upon notice by the City.
5. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
6. **Lighting.** This permit allows no new on-site lighting.
7. **Generators.** This permit does not approve any emergency/back-up generators on site. Any proposed emergency/back-up generators will require Planning approval.
8. **Outside Storage.** No outside storage is permitted.
9. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the applicant. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
10. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building, and Code Enforcement prior to approval of the final inspection of the project.
11. **Colors and Materials.** All wireless communications antennas and screening colors and materials are to be those specified on the approved plan set and shall match the existing structure.
12. **Sign Approval.** With the exception of the monument sign shown on the approved development plans

submitted to the Building Division.

- b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - c. *Archaeology.* Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California; in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission, who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State Law, then the applicant shall re-enter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance
  - d. *Construction Conformance.* A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets.
15. **Anti-Graffiti.** The applicant shall remove all graffiti from structures and fence surfaces within 48 hours of defacement.
16. **Equipment Removal.** The applicant shall remove the wireless communications antennas, associated equipment and structures from the site at such time as the equipment is no longer in use or should the Conditional Use Permit expire.
17. **Co-location.** The applicant and wireless communication facility operator shall facilitate the future co-location of wireless communication antennas on this monopole. The applicant and wireless communication facility operator shall notify the Director of Planning of any proposals by other wireless communication providers to collocate antennas on this monopole. The notification shall occur within 30 days of receipt of the proposal, and shall include the file number of this Permit. A Planning Permit Adjustment is required for co-location of antennas on the existing monopole.



2. **Time Limit.** This Conditional Use Permit expires and has no further force or effect five (5) years from the date of this Permit. Upon expiration of this permit all equipment and associated structures shall be removed.
3. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180 calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.
4. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.